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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN KEITH JACKSON,

Defendant and Appellant.

E073960

(Super.Ct.No. CR69388)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.

Affirmed.

Eric E. Reynolds, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Jonathon Keith Jackson, filed a petition for resentencing pursuant to Penal Code section 1170.95,¹ which the court denied. After defendant filed a notice of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the facts, a statement of the case, and one potentially arguable issue: whether the court abused its discretion in denying defendant's petition. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

One night in June 1996, defendant arrived at the home of Robert and Monique Cleveland “in a minivan containing at least three other individuals. Defendant got out and knocked on the door. As Robert picked up his .45-caliber handgun and went to answer the door, he heard Monique go into the bathroom down the hall. Robert let defendant in and locked the door behind him. Defendant owed Robert \$150 from a previous drug transaction and wanted to get additional drugs. Robert told defendant he did not have any drugs for him that night and said they could discuss the matter again the next morning. During the course of this conversation, Robert set his gun down on the kitchen counter.” (*People v. Jackson* (2014) 58 Cal.4th 724, 733.)

“As defendant walked toward the door to leave, he suddenly pulled out a gun and shot Robert in the face from one or two feet away. Robert fell to the floor and looked up to see defendant struggling with his gun, which apparently had jammed. As Robert

¹ All further statutory references are to the Penal Code.

started to pull himself up from the floor, defendant opened the door. One of defendant's companions then entered and shot Robert in the side while saying, 'Where's the money? Where's the drugs?' and, 'Let's get the bitch too.' At least one other person also entered the house." (*People v. Jackson, supra*, 58 Cal.4th at p. 733.)

"Robert began losing consciousness and was only vaguely aware of hearing additional gunshots. He did not recall being shot a third time. After the men left, Robert regained consciousness. Thinking he was dying, Robert wrote defendant's name in blood on the kitchen floor and then somehow managed to call for help." (*People v. Jackson, supra*, 58 Cal.4th at p. 734.)

Another witness "testified that a day or two after the shooting, he was smoking marijuana with defendant and 'Alex' and asked whether they had heard that Robert and Monique had been shot and killed. Defendant replied, 'Yeah. So what?' A short time later, defendant told [him], 'Don't trip, but I did that.'" (*People v. Jackson, supra*, 58 Cal.4th at p. 734.)

"Defendant then described . . . a version of the events that largely tracked Robert's testimony. Defendant said he had gone to purchase drugs from Robert, but there had been a dispute about the money defendant owed Robert. Defendant felt that Robert had 'disrespect[ed]' him, and defendant decided 'to take what he came for instead of paying for it.' Defendant left the house and went to the car where his friends were waiting. He told them he was going to 'jack' Robert and 'take everything [he] had.' Defendant returned to the house, and Robert answered the door holding a gun. When Robert put the gun on the counter, defendant pulled out his own gun. Robert was substantially bigger

than defendant, and he jumped at defendant and tried to take defendant's gun. Defendant had recently been hospitalized following a motorcycle accident and 'couldn't take a chance on [Robert] grabbing him,' so defendant stepped back and shot Robert. Defendant then let in his 'homies,' and one of them told him to finish what he started. Defendant found Monique in another part of the house. While she was down on the floor, he grabbed her by the hair and asked her where the money was. Monique replied, 'What money?' Defendant then 'blew her brains out,' using a gun he had borrowed from one of his cohorts. During their conversation, defendant opened a nightstand drawer and showed . . . the gun he used to shoot Robert." (*People v. Jackson, supra*, 58 Cal.4th at p. 734.)

Another witness "testified he was smoking marijuana with defendant one or two days after the crimes, when defendant told [him] [defendant] 'messed up' and confessed to shooting Robert and Monique. Defendant said he shot Robert in the head because he 'had to get paid' and shot Monique because he 'didn't want no witnesses.' Defendant and his cohorts then searched the house for drugs." (*People v. Jackson, supra*, 58 Cal.4th at p. 734.)

"A jury convicted defendant . . . of the first degree murder of Monique . . . (Pen. Code, § 187), the willful, deliberate, and premeditated attempted murder of Robert . . . (§§ 664, 187), and being a felon in possession of a firearm (former § 12021, subd. (a)(1), now § 29800, subd. (a)(1)). The jury found true the allegations that defendant inflicted great bodily injury upon the attempted murder victim (§§ 12022.7, subd. (a), 1192.7, subd. (c)(8)), that he personally used a handgun in the commission of

the murder and attempted murder (§§ 12022.5, subd. (a), 1192.7, subd. (c)(8)), and that a principal was armed with a handgun in the commission of the murder (§ 12022, subd. (a)(1)).” (*People v. Jackson, supra*, 58 Cal.4th at pp. 731-732, fns. omitted.)

“The jury also found true the special circumstance that the murder was committed while defendant was engaged in the commission or attempted commission of a robbery. (§ 211; former § 190.2, subd. (a)(17)(i), now § 190.2, subd. (a)(17)(A).)” (*People v. Jackson, supra*, 58 Cal.4th at p. 731.)

“The jury, however, was unable to reach a penalty verdict as to the murder conviction, and the court declared a mistrial. At the penalty retrial, the jury returned a verdict of death on the murder conviction.” (*People v. Jackson, supra*, 58 Cal.4th at p. 732.) By opinion dated March 3, 2014, the California Supreme Court affirmed the judgment in its entirety. (*Ibid.*)

On January 7, 2019, defendant filed a petition for resentencing pursuant to section 1170.95. On March 12, 2019, the People filed a response in which they contended, among other reasons, that defendant’s petition should be denied because defendant was the actual killer. On August 1, 2019, defendant filed a formal reply to the People’s response.

At the hearing on August 30, 2019, at which defendant was represented by counsel, the People noted, “it’s a death penalty case with a robbery/murder special circumstance. [Defendant is] the actual killer.” The court summarily denied the petition.

Defendant filed a timely notice of appeal.

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

III. DISPOSITION

The order denying defendant's petition for resentencing is affirmed.

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McKINSTER

J.

I concur:

RAMIREZ

P. J.

[*P. v. Jackson*, E073960]

MENETREZ, J., Dissenting.

The appellate review procedures under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), in which we review the record ourselves to determine whether there are any arguable issues, apply “only to a defendant’s first appeal as of right.” (*People v. Thurman* (2007) 157 Cal.App.4th 36, 45; *People v. Serrano* (2012) 211 Cal.App.4th 496, 498 (*Serrano*).) *Wende/Anders* review is highly unusual and rooted in the constitutional right to counsel, and courts have repeatedly declined to apply it in other contexts. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 554-555; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 535; *In re Sade C.* (1996) 13 Cal.4th 952, 959; *People v. Kisling* (2015) 239 Cal.App.4th 288, 290; *People v. Dobson* (2008) 161 Cal.App.4th 1422, 1425; *People v. Taylor* (2008) 160 Cal.App.4th 304, 307-308; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570; 579.) Because this appeal concerns a postjudgment proceeding in which there is no constitutional right to counsel, appellant has no right to *Wende/Anders* review. Because appellant’s counsel filed an opening brief raising no issues, and appellant was notified but did not file a supplemental brief, we should not affirm but rather should dismiss the appeal as abandoned. (*Serrano*, 211 Cal.App.4th at pp. 503-504.) I therefore respectfully dissent.

MENETREZ

J.